

1 THE HONORABLE THOMAS S. ZILLY
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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

8 BUNGIE, INC.,

9 Plaintiff,

10 v.

11 AIMJUNKIES.COM; PHOENIX
12 DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
13 JEFFREY CONWAY; and JAMES MAY,

14 Defendants.

No. 2:21-cv-811-TSZ

[PROPOSED] PERMANENT
INJUNCTION

15 THIS MATTER came before the Court for hearing on Plaintiff Bungie, Inc.’s Motion for
16 Summary Judgment. Now, having reviewed the parties’ briefing, declarations, and exhibits
17 attached thereto, and the argument of counsel, the Court hereby makes the following Findings of
18 Fact and Conclusions of Law.

19 **FINDINGS OF FACT**

20 1. Plaintiff Bungie, Inc. (“Plaintiff” or “Bungie”) seeks permanent injunctive relief
21 to prevent Defendants AimJunkies.com, Phoenix Digital Group LLC, David Schaefer, Jordan
22 Green, Jeffrey Conway, and James May (collectively “Defendants”) from creating, developing,
23 supporting the creation or development of, selling, distributing, providing, or otherwise
24 transferring cheat software developed by or on behalf of Defendants for Bungie’s *Destiny 2* and
25 *Destiny 2: Beyond Light* video game (the “Cheat Software”), including but not limited to any

26 [PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 1

1 source code or object code for any version of the Cheat Software, to any third party; and to
 2 further enjoin Defendants AimJunkies.com, Phoenix Digital Group LLC, David Schaefer, Jordan
 3 Green, and Jeffrey Conway from infringing Bungie's DESTINY (& design) registered trademark
 4 (Reg. No. 4,321,315).

5 2. As explained in the opinion that accompanies this order, Bungie has prevailed on
 6 the merits of its copyright infringement and trademark infringement claims. All Defendants have
 7 infringed Bungie's copyrights in *Destiny 2* (Reg. Nos. TX 8-933-655 and PA 2-282-670) and
 8 *Destiny 2: Beyond Light* (Reg. Nos. TX 8-933-658 and PA 2-280-030) (collectively, "*Destiny*
 9 *2*"), and Defendants AimJunkies.com, Phoenix Digital Group LLC, David Schaefer, Jordan
 10 Green, and Jeffrey Conway infringed Bungie's registered trademark rights in DESTINY (&
 11 design) (Reg. No. 4,321,315).

12 3. Bungie has shown that it will be irreparably harmed if a permanent injunction is
 13 not issued. The presence of Cheat Software users within the *Destiny 2* game environment
 14 damages Bungie, poisons the well for players and content creators, and creates an unsustainable
 15 and unsafe environment for legitimate *Destiny 2* players. Moreover, the continuing presence of
 16 Cheat Software users in the game environment discourages communication between players and
 17 game developers, disincentivizes digital content creators from featuring *Destiny 2*, and drives
 18 legitimate current and prospective players from *Destiny 2* entirely. Defendants' use of Bungie's
 19 registered trademark harms the goodwill Bungie has earned in that trademark, and Bungie is
 20 entitled to a presumption of irreparable harm under 15 U.S.C. § 1116 as to Defendants'
 21 trademark infringement.

22 4. Bungie has shown there is no adequate remedy at law for its irreparable harm.
 23 Monetary damages will not adequately compensate for the harm the Cheat Software has caused
 24 to the *Destiny 2* game environment or its community. Monetary damages are similarly
 25 inadequate to repair the harm to Bungie's goodwill caused by Defendants' use of Bungie's
 26 trademark.

[PROPOSED] ORDER
 (No. 2:21-cv-811-TSZ) – 2

5. The balance of equities tips sharply in Bungie's favor. The irreparable harm that Bungie has suffered is substantial, and the threat of Defendants continuing to sell the Cheat Software or develop new *Destiny 2* cheat software is real, given that May continues to develop cheats and Phoenix Digital continues to handle the finances for AimJunkies.com. Any prejudice to Defendants is minimal, especially where Defendants claim that they have sold the AimJunkies.com website and no longer distribute the Cheat Software.

6. Issuance of a permanent injunction is in the public interest. The public has a compelling interest in protecting copyright owners' marketable rights to their works and trademark owners' registered rights, which are threatened here.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over Defendants and the subject matter of this action.

2. A party seeking a permanent injunction must establish that (1) the plaintiff has suffered irreparable injury; (2) there is not an adequate remedy at law; (3) a remedy in equity is warranted, considering the balance of hardships between the plaintiff and the defendant; and (4) it is in the public's interest to issue the injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *Microsoft Corp. v. Buy More, Inc.*, 136 F. Supp. 3d 1148, 1158 (C.D. Cal. 2015), *aff'd*, 703 F. App'x 476 (9th Cir. 2017).

3. Based on the Findings set forth above and the legal standards, issuance of a permanent injunction against Defendants, as provided below, is warranted.

ORDER OF PERMANENT INJUNCTION

Now, therefore, it is hereby ORDERED as follows:

1. Defendants AimJunkies.com, Phoenix Digital Group LLC, David Schaefer, Jordan Green, Jefferey Conway, and James May, and all of their officers, agents, servants, employees and attorneys, and persons in active concert or participation with them who receive actual notice of this order and all persons in active concert or participation with them are hereby enjoined, from

[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) - 3

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

- 1 a. selling, offering to sell, providing, distributing, modifying, updating, or otherwise
2 transferring, or providing the means to transfer or use, the Cheat Software,
3 including but not limited to any source code or object code for any version of the
4 Cheat Software and Cheat Loader;
- 5 b. creating, writing, developing, advertising, promoting, and/or distributing anything
6 that infringes Bungie's copyrighted works, including but not limited to *Destiny 2*;
- 7 c. engaging in any other activity that constitutes an infringement of any of Bungie's
8 copyrights, or of Bungie's rights in, or right to use or exploit its copyrights;
- 9 d. Using any unauthorized simulation, reproduction, counterfeit, copy, or colorable
10 imitation of Bungie's registered trademarks, including but not limited to,
11 DESTINY (& design) (U.S. Reg. No. 4,321,315), in connection with the
12 manufacture, distribution, offering for distribution, sale, offering for sale,
13 advertisement, promotion, or display of any software, component, item, or thing
14 not authorized or licensed by Bungie;
- 15 e. Assisting, aiding, or abetting any other person or business entity in engaging in or
16 performing any of the activities referred to in paragraphs (a) through (d) above.

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18 DATED this _____ day of _____, 2023.

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20 _____
21 Honorable Thomas S. Zilly
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23 UNITED STATES DISTRICT JUDGE
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[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 4

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2 Presented by:
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4 /s/William C. Rava
5 William C. Rava, WSBA No. 29948
6 Christian W. Marcelo, WSBA No. 51193
7 Jacob P. Dini, WSBA No. 54115
8

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Email: WRava@perkinscoie.com
CMarcelo@perkinscoie.com
JDini@perkinscoie.com

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11 *Attorneys for Plaintiff Bungie, Inc.*
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[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 5